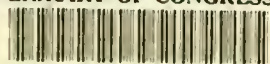


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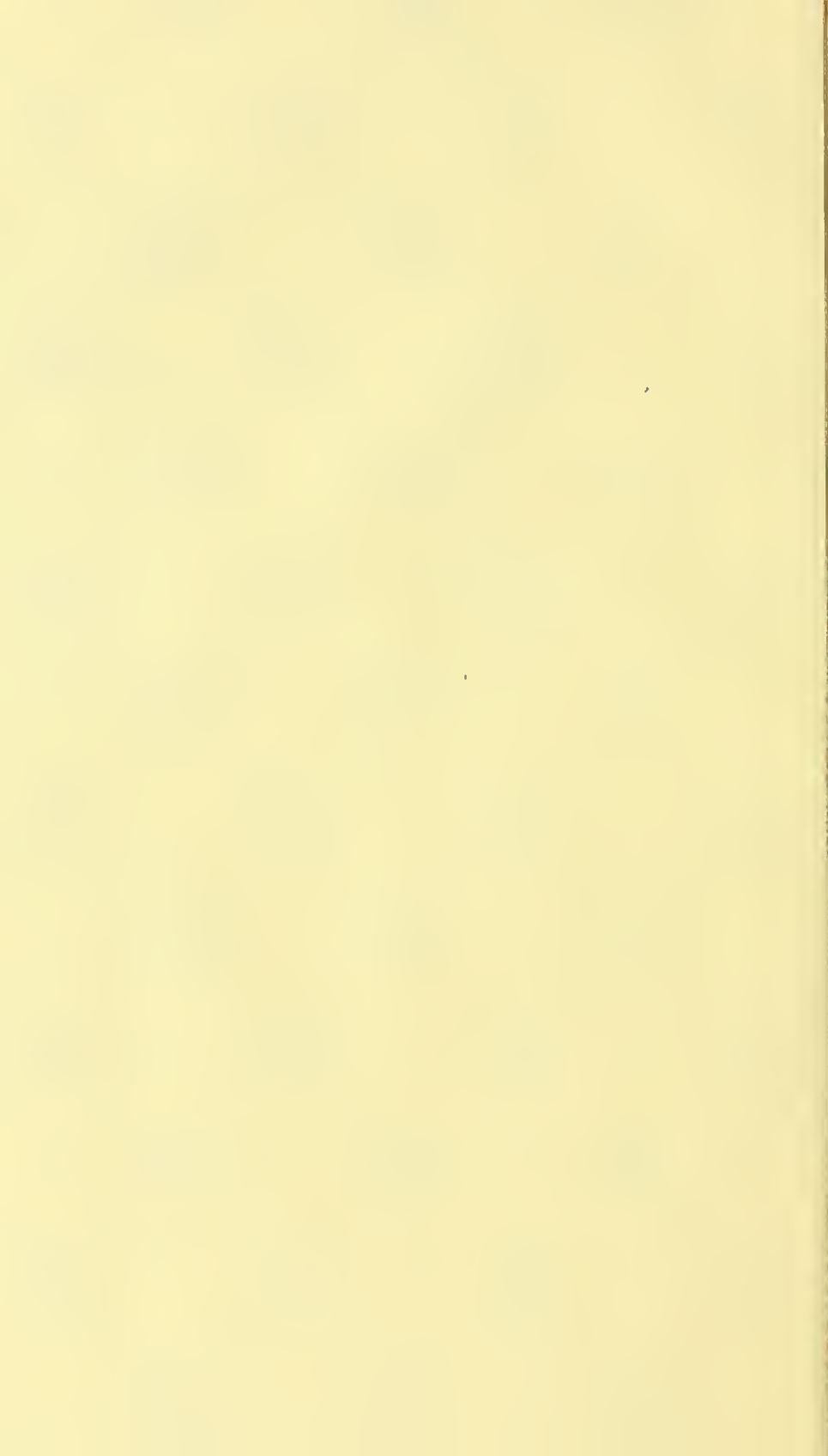
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HON. WILLIAM A. GILBERT'S DEFENCE.

The Select Committee appointed by the resolution of the House, the 11th January to investigate certain charges referred to in the preamble of the resolution having presented a report charging the undersigned with corrupt misconduct as a member, and recommending his expulsion, he begs leave to submit some observations upon that report, and the statements of witnesses on which it is based:

Two charges are made against Mr. Gilbert by the committee:

1. "That he did *agree* with F. F. C. Triplett to procure the passage of a resolution or bill through the present Congress for the purchase by Congress of certain copies of the book of the said Triplett on the pension and bounty land laws, in consideration that said Triplett should allow him to receive a certain sum of money out of the appropriation for the purchase of the book."

2. "That he *did cast* his vote on the Iowa land bill, depending heretofore before this Congress, for a corrupt consideration, consisting of seven square miles of land, and some stock given, or to be given, to him."

By reference to the original and amended resolution appointing the select committee, it will be seen that they were authorized to investigate certain charges "that the members of the House had entered into corrupt combinations for the purpose of passing and of preventing the passage of certain measures during the present Congress."

The questions then arise, in the outset, what jurisdiction had the committee to prefer the charges they have presented, and what jurisdiction can the House exercise even if the charges were true?

I. Whatever power the House might have to inquire into the motives for which individual members "cast their vote" upon the Iowa land bill, none was entrusted by the House to this committee. They were selected to inquire whether "members had entered into corrupt combinations for the purpose of passing or preventing the passage of measures before Congress."

Whatever might be the offence of an individual member, or the corrupt consideration that influenced his vote, was a matter entirely distinct from the charges that prompted the investigation, and was entirely beyond the power conferred upon the committee.

Again: as to the first charge—the alleged agreement to procure the passage of a resolution to purchase Triplett's book—it is not even pretended that any such measure was ever before the present Congress. No petition, bill, or resolution upon the subject was even introduced. Whether such agreement would be legitimate or immoral, what jurisdiction could be exercised over it by the committee or by the

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House, unless it related to some measure before the House? Until some such measure came before the House, some overt act done in the House, and pursuant to the agreement, or some effort made, as a member, to carry it into effect, it was beyond the jurisdiction of the House. If any other view be taken, where is the limit of jurisdiction over the agreements or conduct of members? It is submitted that no principle, no precedent, or authority has been or can be shown by the committee to justify the jurisdiction they have themselves exercised and invoke from the House upon a subject that never was before that body.

It is submitted that a due regard to parliamentary law, to common justice, and a decent respect to the rights, the character, and feelings of a fellow-member, required the committee to submit the question of jurisdiction to the consideration and judgment of the House before they preferred such a charge, excited prejudice against him, and affixed a stigma to his name.

II. The committee having disregarded these considerations, and made a defamatory report against a member of the House, it becomes necessary briefly to examine the grounds on which they profess to rest their accusation. "The testimony of *two* witnesses," says the report, "relates to that member." In regard to this testimony, as it is called, it will be observed, 1st. That it was taken by the committee *ex-parte*, without notice to the accused, behind his back, and was thirteen days in possession of the committee before any information of it was given to the party. The record shows that Sweeney and Triplett were examined on the 16th of January.—(Report, pp. 55, 66.) On the 29th of January, Mr. Gilbert was informed by a note from the chairman that "certain testimony (a copy thereof being furnished) was given before the committee, in which his *'name appears.'*" But what view was taken by the committee of that testimony, whether it was regarded as within the scope of their inquiry, whether it would be the foundation of any charge against him, or would be acted upon by them, was not only undisclosed, but *carefully concealed* from the party until the report was read in the House. For the record shows (page 80) that an anxious and distinct application being made to know whether they regarded Sweeney's testimony as "of sufficient importance to justify further proceedings so far as he was concerned," in order that he might prepare his defence, he was informed that the committee would not "intimate any opinion"—"that he must himself be the judge of the *nature, extent, and scope* of his defence." Thus accused in the dark, until the moment when the report was read, he was left without any intimation of the nature, extent, and scope of defence that might be requisite.

It may be said, indeed, that he had a copy of the testimony. But when the resolution of the House limited the jurisdiction of the committee to "*combinations* of members for the purpose of passing, or preventing the passage, of measures before Congress," how was he to know that his alleged conduct in regard to a measure never before Congress, or that the consideration for which his individual vote was cast on the Iowa bill, was to be the subject of specific charges against him by the committee—that these were embraced within the nature,

extent, and scope of the required defence? In former cases, the conduct of individual members *named in the resolution*, or relating to particular specified transactions, have been the subject of inquiry, but in the whole range of parliamentary proceedings no instance parallel to the action of this committee can be found.

III. It is further said in the report, that "the committee tendered to Mr. Gilbert an opportunity to *confront* the witnesses whose testimony related to him, and to have them subject to examination in his presence, but this was declined by him." But when was this "tender" made? The record shows that it was not until the 3d day of February. But on the 16th, 17th, and 20th of January, the witnesses were before the committee without any notice to the party of what was going on against him, and not until fourteen days after the testimony was closed, when the last arrow was discharged, and when the committee acknowledged they had no "testimony in reserve," they offered him the slim chance of recalling Sweeney and Triplett; refusing, however, to let him know to what point he should direct his examination, or what was the nature, extent, and scope of needful defence.

Under these circumstances it is submitted that in no form of procedure can the statements, of these witnesses have any character as evidence against him.

IV. The position in which the witnesses stand, the nature of their statements, and the manner of their examination by the committee, are also worthy of notice.

The only two witnesses are Sweeney and Triplett, who stand by their own confession, in the position of acknowledged accomplices of each other's guilt, and who seek to connect Mr. Gilbert with themselves in their offence, thereby to escape the consequence of their own admitted acts. They are uncorroborated by a single witness, or a single fact stated by any other person; and the shallow effort of the committee to strengthen their statement by their *corroboration of each other*, would excite a smile if it were not done for the grave purpose of affixing a guilty stain upon a fellow member. The testimony of parties whose own guilt is manifest, has never been held, even in slight matters, sufficient evidence to establish the guilt of another, unless corroborated by some honest witness, or some fact outside of their own testimony; no *concurrence between themselves* is adequate for that purpose. The allegation of the committee that there is a "substantial concurrence" will hereafter be shown to be incorrect.

V. The statements of these persons, moreover, consist of *conversations* unaccompanied and uncorroborated by any act; a class of evidence justly characterized by a distinguished judge of the Supreme Court, "as the most doubtful and suspicious of all proof, seldom correctly remembered or truly stated, easily and almost always misrepresented."—(2 Wallace.) Nor is this all; for the record shows, page 57, that the chief witness, Sweeney, does not pretend to remember the *details* of the conversation on which the whole charge rests; that he was not even required to state them; but that the committee, acting behind the back of the member, called for Sweeney's "*impression*," and lent

him their aid by leading questions that would not be tolerated in any court of justice.

For example: the first and only serious charge is the contract with Triplett, which was at first intimated to be in writing. But when the contract was called for, Sweeney acknowledged it was in his *own name*, and when produced, it was found to be an agreement between Triplett and Sweeney alone, or rather an order by Triplett, on the Clerk of the House, in favor of Sweeney, in which Gilbert's name is not even mentioned.—(Report, p. 56.) In order to connect Mr. Gilbert with the transaction, it was necessary to violate the plainest law of evidence by *parole proof*, contradicting and explaining the written document, allow Sweeney to swear his own name off the writing, and put on Gilbert's. In this predicament Sweeney stated that the writing was not *the* contract, but that *the* contract was verbal, and made in his presence, between Gilbert and Triplett.—(Report, page 56.) Being asked to state the conversation between Gilbert and Triplett, on which the whole case turned, he says: "I cannot remember the details of the conversation."—(Report, page 57.) Being then asked to give the "*general purport*," he answers: "*I would not pretend to give the language used on that occasion. I do not know that I can give EVEN THE SUBSTANCE OF THEIR TALK.*"

Able to give neither the details of the conversation, nor the language, nor its general purport, nor even its substance, this question is then propounded: "By Mr. Orr. What was *your impression*?"—(Report, p. 57.) Thus turned loose into the boundless and unchecked field of *impressions*, it would seem to be an easy matter for a witness of Sweeney's character to establish any point the committee desired; but at almost every step he needed and was lent the aid of leading questions, for the very answer as to his *impression* whether the rate to be paid was \$1 35 per copy, and the sum \$7,500, is qualified by the remarkable expressions, "*I may be mistaken* in saying that he was to give \$7,500 if the book was put in at \$1 35. It may have commenced at \$1 40, at \$8,000. *I think* I could *figure it up* so as to speak precisely; but my *impression* is, that it was \$7,500 for \$1 35 per copy, and \$500 for every five cents per copy beyond that sum."—(Record, p. 77.) At this juncture, unable to specify the contract by language, details, purport, substance, or impression—for his impressions contradicted each other—unable even to "*figure it up*," he is helped out by the suggestion of a "*graduated scale*," and seizes upon it with alacrity.

"By Mr. Orr. It was a graduated scale contract then?"

"Witness. Precisely." * * *

But this was not free from difficulty, for the writing was for a specific sum—was no "*graduated scale contract*;" so that, seeing danger ahead, the witness goes on to say: "Then there was a certain sum which he agreed to pay beyond that;" "*I think* it was the expectation, &c. *I think* he was to pay at the rate I have stated, &c. *I could not speak with accuracy, however, as to the figures, without making a calculation.*" Pausing here, let any candid man notice this proceeding. The committee were dealing behind a member's back with a matter that involved his dearest rights as a member, a citizen, and a man. They were inquiring in his absence as to his guilt or innocence of a charge which, if true, in their view warranted ex-

pulsion. They had before them a witness to establish that charge. The question was, whether there was a contract between Gilbert and Triplett, as the witness had sworn? The writing he produced showed the contract was his own, and not Gilbert's. The witness then undertook to establish by conversation a *verbal contract*, different from the writing. Charged, as the committee were, with the honor of a member and the duty of justice to a man, by assuming an examination behind his back, in what court would such a leading examination have been allowed?

But to constitute the contract, there must have been a *sum* to be paid, and a person to *receive* it. As to the *sum*, we have seen that neither "purport," "impressions," "figures," nor "graduated scale" would arrive at any certainty, and the committee have not even *ventured to specify any sum*, although an essential element of the contract, if any existed. How is it as to the *person* who was to be paid? On page 56, near the top of the page, it will be seen that the witness says "*there was some misunderstanding, as I understood, as to whom the money was to be paid.*" The payment specified in the writing was to be made to Sweeney alone.

VI. On page 57, near the bottom of the page, it will be seen that the committee having failed, even by the mode they adopted, to ascertain what *sum* was to be paid, directed their attention to the *person* who was to receive the money. The writing showed no connexion with Gilbert; and having asked whether any resolution had been offered, which was answered in the negative, this question, if it can be so called, was immediately propounded:

"By Mr. Orr. *You were, then, to pay over this money to Mr. Gilbert, if the resolution passed?*" But the witness, not yet prepared to follow this lead, answered: "There was something said about negotiating the paper, if the resolution passed."

"By the Chairman. Who was to have the avails of it?"

"Witness. I have stated in my explanation who the bargain was made between. I do not know that I was instructed, in so many words, to pay the money to anybody." But it being necessary, in the view of the committee, to implicate Mr. Gilbert, the witness was again led to the charge that was wanted:

"By Mr. Orr. Then it was the *understanding* that it was to be paid to Mr. Gilbert *by you?*" Placed on the safe ground of *understanding*, the lead was thus promptly followed:

"Witness. That was my understanding at the interview to which I have referred." But he adds: "As I have stated, I was not called on afterwards to pay it to anybody." (Page 57.)

With such a witness, and such a course of examination by a secret committee behind his back, what member of Congress is safe from imputation?

The attention of the House is directed to what took place a little further on, at page 58. Seeking for the implication of other members, the witness is asked by Mr. Orr for conversations between Mr. Gilbert and other members as to their participation in this transaction, with the proper caution in this instance that "I only in that ask for your personal knowledge." Thus restrained, the honor of other members was saved only by that precaution, as Mr. Gilbert's might have been,

if, as common justice required, the same caution had been used towards him, for the witness answers—

“Witness. My *impression* is very strong that other persons did have an interest in it, but I cannot certainly answer the question ; for, although I have *inferred* that other members were interested, I may have drawn the inference erroneously, &c.”

Now if the same rule had been applied to others, and this witness called upon, as he was in respect to Mr. Gilbert, for his “*impressions*” and his “*inferences*, although they might be erroneous,” who would have escaped? And why were all the rules of evidence and common justice violated in order to strike down one member rather than another? If one inquisition may select its victims, why may not another do the same?

VII. To pursue the examination and point out all its violations of justice and law would require too much time. But one thing is too remarkable to be passed over. By what means the committee undertook to establish their first charge has already been seen. Having exhausted the “*impressions*,” thoughts, “*figures*,” and “*understandings*” of the witness on the first point, they proceeded, on page 59 of the report, to make some enquiry touching the subject of the second charge. After some questions had been propounded by Mr. Orr, the answers to which in no degree implicated Mr. Gilbert, or any one else, the witness having intimated that he could not criminate any one but Mr. Gilbert, he is thus encouraged—

“By Mr. Warner. *It is due to other witnesses who have testified before us that their testimony should be corroborated, and therefore we ask you the question.*”—(Report, page 60.)

Now, this examination was on the 16th of January. The journal of the committee shows that they met for the first time on the 12th of January, and appointed a clerk.—(Report, page 40.) That they again met on the 14th and examined Henry J. Raymond, and on the 15th examined James W. Simonton. Sweeney was the next witness. Raymond and Simonton then were the only witnesses who had been examined. They were the persons to whom it was “*due that their testimony should be corroborated*,” viz: the writer of the charge against members of Congress and its publisher. But was that the authority delegated to this committee by the House? Was it not their only duty, by fair means and legal evidence, to seek the truth without regard to whomsoever might be “*corroborated*” or contradicted? And when did it ever before occur in a judicial investigation that a flag was held out to a witness to notify him that others had gone before in the path of accusation, in which he might safely follow? That “*therefore*” the question was asked? And does not this statement, appearing upon their own record, afford a clue to the extraordinary conduct of the committee in violating the rules of evidence and the principles of justice towards a member? A calumnious charge indiscriminately against members of Congress, published in a widely circulated journal, the testimony of its authors failing to establish its truth, they required “*corroboration*.” But the undersigned solemnly protests against this effort to sacrifice him in order to corroborate the assailants of Congress.

And in this connexion, it cannot fail to be observed that both Sweeney and Triplett seem, like the committee, to consider it their special mission in this case to "corroborate" those who had gone before them in charging corruption upon Congress, for both swear to the charge of the "Times" that such is the general reputation of Congress.

VIII. How such an intimation as was given to Sweeney by Mr. Warner would operate upon "a vindictive and not over scrupulous man," as the committee admit Sweeney to be, can readily be understood, and it accounts for his extraordinary and incredible story that a member of Congress voluntarily should in the public streets boast to another, without motive or pledge of secrecy, that he had received "seven square miles of land and some stock" for his single vote for a bill on which only 59 members voted against its passage.

The means by which the committee extracted from Sweeney the accusatory material upon the first charge (evidence it cannot be called) has already been considered. And here is revealed, by the declaration of one of the committee, in open session, to a witness on the stand, the reason why they sought for the other charge. But is it not incumbent on the committee to explain what corroboration was needed for the witnesses "who have testified before?" Where is their evidence?

No such previous testimony appears on the record!

A witness upon the stand, under secret examination, evidently desirous, but hesitating to accuse, is told by his examiners that "it is *due* to other witnesses who *have* testified before us that their testimony should be *corroborated*."—(Report, p. 60.) What is the import of this observation to the witness immediately after his own hint that he can implicate some one? Is it not an imprudent and dangerous intimation to him—first, that the committee *wish* to strengthen an accusation, and *will credit* the accuser; second, that *he may safely* accuse, because others have already done so; and as he will corroborate them, so they will corroborate him? Does it not, also, signify that the committee, losing sight of the limited authority and responsible duty entrusted to them by the House, had become, as it were, the prosecuting agents of the editor and correspondent of the New York Times, and, in anxiety to "corroborate" the wholesale traducers of Congress, forgot justice to members of Congress?

IX. The story of Sweeney, however, is incredible in itself, and stands, by the confession of the committee, "solitary and alone." The only two witnesses against Mr. Gilbert were Triplett and Sweeney, and the former said nothing about the Iowa land bill. But, if seven square miles of land, (4,480 acres,) worth, at government price, over \$11,000, were given for one vote, the land must have had some location—there must have been some evidence of grant, some giver to bestow such a bounteous gift. Where then is the land, and who gave it? Every foot of land granted by the Iowa land bill can be traced. None has been traced to Mr. Gilbert by the committee. They had before them Mr. Chase, the very person named as the bestower of the gift, and he positively denies the whole charge. But the laborious path by which the committee arrived at the ridiculous story of Sweeney and the

manner in which he trifled and amused himself with them, is worthy of notice. It appears from the report (page 60) that after Mr. Warner had held out the flag to the witness, Mr. Orr took him in hand, and after an examination of a page and a half extracted nothing. On page 61 Mr. Warner took him, but soon relinquished him to Mr. Davis, who immediately relinquished him to Mr. Ritchie. He tried him in vain for another page and a half, and gave him back to Mr. Davis, who again failed. Mr. Orr then complains: "By Mr. Orr—I think you put yourself in an awkward position by the course you are taking, especially when you say you know what we are driving at." Mr. Davis again resumed and again failed to reach "what they are driving at." Mr. Warner, Mr. Davis, and Mr. Orr then by turns resumed the task, and at last the witness, taking their opinion "as gentlemen and as lawyers," has pity on them, and tells his story. That story has for its date "warm weather," for its place "somewhere about Four-and-a-half street," for its time "late in the evening," and for its accompaniment "a glass of soda water," and it "very much surprised" the witness, so much so that he went home and remarked to *his family* that "I thought it very strange that he should have placed himself in that position."—Report, p. 64. The land had no location, he did not know how the conversation originated, but the name of the negotiator was an ex-member of Congress, Mr. Chase, a witness before the committee, who proved that the transaction had never taken place.

X. With these observations, the testimony of Sweeney is dismissed with the single remark, that if a witness was ever successfully impeached in his general character, and his character for truth and veracity, by general reputation and particular facts, James R. Sweeney is that man; and if anything be wanting to show the House the utter perversion of the testimony by the committee, it will be found by reading their statement as to Sweeney's character, and the evidence of impeachment. It is true, some witnesses held his character good, and would believe him; and so it is always. Nothing is more extraordinary than that any man, however base, cannot find some one who will believe him if he swears to an evil story against another. But when five witnesses, of high personal character, great intelligence, and unquestioned integrity, come from a man's home and swear that his general character is *bad*, that *his character for truth and veracity is bad*, that *they would not believe him on oath*—and upon a cross-examination show that by his former friends and benefactors, like Justin J. Butterfield, late Commissioner of the Land Office, and others, by his partners in business, by those who have had no dispute or controversy, political or otherwise, with him—that by such persons he is regarded in his own neighborhood as "rotten-hearted," "fraudulent," "treacherous," "lying," "deceitful," "revengeful," "hypocritical," "false," and "dishonest," there is in the character of such a man nothing to justify faith or credit in any story, however probable in itself, much less when the story comes as Sweeney's came, and is such as he tells. The committee, moreover, are constrained to confess that he is "vindictive when provoked, and not over scrupulous in his measures of revenge."—(Report, page 8.)

XI. The time already occupied forbids, and, indeed, it is unnecessary, to make much remark as to the remaining witness, Triplett, for the case will be found to rest entirely upon Sweeney's shoulders. With a book that he wanted Congress to buy, it appears from his own statement that Triplett, starting out with the notion that "nobody who knows the organization of Congress expects to carry anything through it merely by love of justice," he was introduced by Sweeney to Mr. Gilbert, and upon that introduction some conversation took place in respect to the book and the price at which it could be furnished; Triplett mentioning the price he would take, and that he did not care what became of the balance. It appears that Sweeney was engaged in lobbying claims, and some time *after* this interview Triplett gave to him the order upon the clerk of the House that has been mentioned. No resolution to purchase the book ever passed, nor was one ever offered. He states that Mr. Gilbert never asked for the order. He, therefore, had no more than Sweeney's word that any member of Congress was interested in it. *Sweeney was the party who came to him originally upon the subject*—page 69. He did not know who was to receive the money, "he did not care about inquiring who was to receive it." But as his knowledge failed to show any guilt, *his impressions* were invoked.

"By Mr. Orr. Was it *your impression*, when Mr. Sweeney made application to you for the writing, that it was made in consequence of anything that had passed between him and the member; in other words, that his application was based upon an interview with the member?"

"Witness. That was my impression, *though the member never told me so*. The truth is, Mr. Sweeney came to me originally *upon the subject*," &c.—*Report*, p. 69.

So that Triplett's "impressions" from Sweeney's stories are all that were derived from this witness by the committee!

From the beginning to the end, the charge rests solely upon Sweeney's uncorroborated story, so far as there is any guilt to be imputed.

XII. From the sources that have been mentioned, and by the means referred to, the committee have derived their charge. That, standing alone, it is wholly unsupported by anything worthy of the name of evidence, must be plain to every candid mind. But when notified of their proceedings, Mr. Gilbert appeared before the committee, and, under oath, put in his answer to the defamatory story; that answer, full and complete, alleges, among other things, that "no agreement was made with me by Mr. Triplett, Sweeney, or any other person, whereby I was to have or did expect to have any benefit from the passage of the resolution. I never knew of or had the remotest idea of the existence of the writing or order until after it was produced before the committee." And in regard to the Iowa land bill, "I have to say, that I have not the slightest recollection of ever having had a conversation with Sweeney on the subject, and *I know* that I never told him that I was to have seven square miles or any other quantity of land for my vote. I never stipulated for any quantity of land or other pecuniary consideration for my vote for that or any other bill."

"I have voted upon all the measures before Congress since I have been a member according to the dictates of my judgment, and not from any motives of personal gain."—*Report*, p. 79.

The record shows (p. 76) that the committee decided they would not regard him as a witness. But from that decision he appeals to the better judgment of the House, and claims, that in cases of this nature the statement of a member under oath *is* evidence in his favor of the highest character, that cannot be overcome but by the testimony of two unimpeached witnesses. This he is advised is the parliamentary law, and without this wholesome rule a member of Congress would be at the mercy of any scoundrel that infests the halls of Congress. His statement is, moreover, confirmed by the testimony of Mr. Welch and Mr. Chase, both of whom swear to facts wholly inconsistent with the stories of Sweeney. Justice to himself would require some other points in the report and proceedings of the committee to be noticed, were it not that the defence has already extended beyond the limits he desired. This necessity has been imposed upon him by the irregular and unfair procedure to which he has been subjected. But, without further remark, he submits his case to the House. If the charge be entertained he demands an open trial by the House, where justice will be administered according to legal evidence, and in legal form, and where his rights as a man and his privileges as a member will be respected. Protesting his innocence in fact and intention in every respect wherewith he stands charged, with an apology for the length of these remarks, he cheerfully abides the judgment of the House.

W. A. GILBERT.



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